called the golden rule, that the grammatical and ordinary sense of the words is to be adhered to and by this means the intention of the maker or lawgiver must be sought. The ordinary meaning of Netherlands would seem clear enough. I can find nothing here, or for that matter in the rest of the Order, which could lead one to suppose that the draftsman, or the persons making the order contemplated the successors of the State of the Netherlands or any state other than the Netherlands. It would seem to me quite clear that they have not used language capable of including any one else. The provision is in essence, tantamount to a grant of the rights, powers and facilities afforded by the Act, and that grant is to one person only, by name, which person still exists. It may well be that diplomatic language is sufficiently elastic to include the Republic in the benefits of the Treaty, but there seems to be no Order in Council applying the Act to the Republic in respect of this Treaty, or of any other treaty.

My opinion is confirmed by other considerations. The powers under the Extradition Acts are statutory powers, and should be exercised strictly in accordance with that statute, whether it be powers of officers acting under section 6, or of making orders under section 2. Parliament, in committing the application of the acts to the Executive, has yet required that all orders made should within six weeks be laid before Parliament. It does not, as Sir Francis Piggot states in his book "Extradition" at page 40, in a passage quoted by Sir Roland Braddell, expressly reserve any powers of modifying the order, but there can be no doubt that it has full power to secure the revocation of any order it disliked. What use is made of this provision is immaterial, there is yet a tacit assent to every Order in Council. I agree with Mr. Massey that to treat the Acts as applied to a state, whose name has never appeared in any Order laid before Parliament, would vitiate this procedure and be an abuse of the power of applying the Statute. It is true that an objection to an order on this ground might be an objection to its validity, and so barred by section 5 of the Act of 1870, as, it is said, and I think wrongly, is my mere construing of the Order. Just as there is no evidence of any intention by the King in Council to apply the acts to the Republic, so also I can see no corresponding tacit assent of Parliament. Moreover, the contrary contentions would render the law liable to change by what the Attorney-General tells us, I think rightly, is a legal use of the prerogative in violation of those very principles which Sir Roland Braddell cited from pages 15, 29 and 32 of Sir Francis Piggot's book. It would also imply that the law is no longer to be ascertained from a perusal of the instruments in which it is supposed to be embodied, but can only be surely ascertained by what is, in practice, an application to the Foreign Office for its latest opinion of what certain terms mean. This is obviously contrary to all sound legal principles, and to all the history of our jurisprudence.

In these circumstances it would seem to me that any proceedings based on a contrary assumption are misconceived and I think that the Order applied for should be made.

Order accordingly with costs against the Crown.

See [1952] M.L.J. 27.

KANG BARK TENG AND ANOTHER v. LEE AH ONG AND ANOTHER.

[Orig. Civ. Juris. (Evans, J.) December 15, 1950]

[Singapore — Suit No. 636 of 1950]

Negligence — Motor accident — Death of passenger — Liability of party responsible for accident — Quantum of damages — Civil Law Ordinance (Cap. 42) — Civil Law Amendment Ordinance, 1940.

This was an action brought by the administrator and administratrix of one Ng Seow Hee whose death was alleged to have been caused by a street accident which in turn was attributed to the negligence of the defendants or their servants in driving a car and lorry respectively.

The deceased, who left a widow, a son, and a mother, was an unlicensed hawker of pork and for some years had been employing the second defendant with his lorry to convey pig carcases to his stall. At the time of his death the deceased was returning in the second defendant's lorry from the slaughter house and while he was so returning the collision between the lorry which was driven by the second defendant and the motor car driven by the first defendant's son occurred.

Held, (1) that damages must be based on the earning capacity and opportunities of the deceased; (2) that on the facts both drivers had been guilty of negligence to some degree and, as the first defendant had done something which rendered the occurrence of an accident unavoidable although at the material time the accident seemed yet to be avoidable, that the first defendant was solely responsible for its occurring and was therefore liable for the whole of the damages awarded to the plaintiffs and the dependants of the deceased.

Cases referred to:—

(1) *Davies and another v. Powell Duffryn Associated Collieries, Ltd.* (1942) A.C. 601.

(2) *Bishop v. Cunard White Star, Ltd.* (1950) 2 All E.R. 22.

(3) *Lory v. Great Western Railway Co.* (1942) 1 All E.R. 230.

ACTION for damages.

D. Murphy for the plaintiffs.

D. S. Marshall for the first defendant.

Chong Thutt Pitt for the second defendant.

Evans, J. : — This is an action for damages occasioned by the death of one Ng Seow Hee alleged to have been caused by the negligence of the defendants. It is brought by the Administrator and Administratrix of deceased estate on behalf of the estate and on behalf of the dependants of the deceased. The death occurred in a street accident on 4th May, 1950, and is said to have been caused by that accident which in turn is attributed to the negligence of defendants or their servants in driving a car and lorry respectively.

Deceased was a pork butcher, or an unlicensed hawker of pork, who occupied apparently almost continuously a pitch on some vacant land in Waterloo Street. For the purposes of this trade he had to convey pig carcases from the slaughter house in Jalan Besar, and for some years has employed defendant with his lorry for this transport. On the morning of 4th May he was so returning from the slaughter house to Waterloo Street. The lorry was driven by second defendant, and in the body of the lorry were four carcases piled one on top of another on the right side and on the other side deceased placed his bicycle leaning unsecured against the side, and himself stood holding the cycle. The flap was up. The lorry would seem to have been badly loaded but nothing seems to turn on that though it might have made the lorry a little harder to turn to left than to right. The lorry drove along Jalan Besar to where it is crossed by Syed Alwi Road. At this crossing Jalan Besar carries the greater volume of traffic, and is also a much wider street than Syed Alwi Road.

The first defendant owns an Austin 10 h.p. car, the same power and make as the lorry, but of later date. This car was driven this morning by his son Lee Kwee Lim who was taking his mother to church. It was suggested that they were hurrying. It was early and, there can have been little traffic. The mother states she would not have allowed fast driving. While I do not think she is likely to enjoy racing, I also do not think she is likely to be a good judge of speed. She says she always tells her rosary when driving in her car, and her thoughts may be supposed to be elsewhere.

Both drivers say they were driving at a moderate speed, and slowly across the crossing. Both put their speeds at 10 m.p.h. crossing. With efficient brakes they could have stopped in a very short distance. It is thus difficult to understand how any accident could take place. There is no good evidence of the damage to the vehicles; only that of a police constable is available. All the damage described is purely superficial and, despite the photographs, there is no evidence of damage to the front axles or other heavier parts, such as might be expected had either car been driven very fast. In this regard the material evidence appears inconsistent, as after the collision two carcases and deceased were lying in the roadway possibly some fifteen feet or so from a spot likely to have been traversed by second defendant's lorry. Although both may be minimising their speeds, I do not think either was travelling at excessive speed.

This only means that a proper look out cannot have been kept. Approaching the crossing each must have regard to the traffic on the near side first, that is, traffic approaching from the right, and must conduct himself accordingly, and in accordance with the same obligation on any other. The car had the lorry on its right and this duty lay therefore more heavily on the driver of the car. He was moreover on the minor road and had the wider road to cross. He says he saw no one in Jalan Besar, and then that he suddenly saw the lorry 40 feet away. I have no doubt it was easily visible for a considerable distance, and I do not think the first defendant saw it at 40 feet which could put the lorry in Jalan Besar, where little of Syed Alwi Road would be open to the driver. The first defendant says he was then in the middle of the crossing, that is, twenty feet from the side; the whole of Jalan Besar was opened; there was ample room for the lorry which he says was on its left side to pass behind, and in fact it could in such circumstances hardly have failed to do so. He says he saw the lorry turn away but he took no corresponding action nor any action likely to evade the accident or to minimise it. He says he accelerated, and this could not have benefited. How near the action taken by the driver of the lorry came to succeeding may be seen in the fact that he struck the car at the top of the arch of the front mudguard, while his back wheels must have been travelling in a smaller circle. The car was I think travelling the faster of the two and having the greater momentum threw the lorry off. This may well explain the second separate blow to the car's rear mudguard, and provides a contrary force which is more violent than that occasioned by violent braking and which might account for deceased's fall.

The lorry driver says he first saw the car when it was ten feet distance. This I think must be less than

the truth, and would hardly have given him time and space to turn as far as he seems to have done. He says that had he turned left, that is turned to go behind, he would be killing himself. The probability is he took the safer course. This account better explains what undoubtedly happened. He is by far the more experienced driver, and he alone took some reasonable action. In the circumstances described he was entitled to expect the other driver to take corresponding action and to brake. Had the car driver turned away, it would seem that the accident might have been prevented.

The deceased died from a fracture of the skull almost separating the top of the skull, and running from temple to temple round the back of the head, the doctor expressed no opinion as to the blow, but that would seem to be to the back of the head. There is no evidence of any bruise, or of any grazing, but the doctor would have expected the skin to be broken by a fall on the road. The lorry driver denies applying his brakes violently or at all. The deceased was last seen standing holding his cycle with one hand, and the frame of the hood with the other. This frame seems a light structure. Doubtless there are smooth surfaces in he car, which deceased might have struck, but there is no evidence of it. Had he fallen with any great forward velocity grazing would seem inevitable. Despite therefore of the distance he was thrown, I do not think he can have been travelling fast. He was thrown from some height. I think his fall, and death were directly due to the collision. There is in my opinion no evidence on which the driver could have been found guilty of an offence against Rule 5 of Motor Vehicles (Carriage of Persons in Goods Vehicles) Rules 1948.

The loss suffered by the deceased's estate and those for whom plaintiffs claim is not simple to assess. The mode suggested was to ascertain the loss of each wife, son and mother separately. The deceased worked on his own account, and there are no figures whatever to show the profits of his business. On this occasion the four carcases are all said to be his, and his business may have been considerable having regard to the inadequate nature of his "premises". The profits might also be high the tenure and business being precarious. The widow says his "wages" were $240 *per mensem*. This is but the vaguest indication. She also gave estimates of expenditure amounting to $211 *per mensem* though these did not include any allowance to deceased or to his two sisters. The figures are vague, and do not, as can be seen, tally. They also spoke of future expenses, but these cannot be the measure of loss. In the cases cited the loss seems always to be based on earning capacity, and opportunities. I do not think the wife's and mother's interests in these can have exceeded $50 and $35 *per mensem* respectively. The son is an infant and his interest not constant, while those of the others might be abated for his. In many cases *Davies & another v. Powell Duffryn Collieries Ltd.*[1]; *Bishop v. Cunard White Star Ltd.*[2]; *Lory v. Great Western Railway Co.*[3], however, the distribution between dependants of the total damages suffered appears to be arbitrary. Turning from this probable income, and interest, at death, to the security, or probability of continuance, the case appears one as unsuitable as possible to be dealt with in the manner suggested by plaintiff and based on secured incomes. The deceased was an unlicensed hawker, he was apparently liable not only to eviction for an indefinite term or for good, but to confiscation of goods and prosecution.

In the circumstances I should assess the total loss at $5,000 of which I should assign $2,500 to the mother, $1,250 to the widow, and $500 to the son under the Civil Law Ordinance (Cap. 42) and $750 to plaintiffs under the Civil Law Amendment Ordinance 1940. She is also entitled to the special damages claimed $300 for funeral expenses, and $250 as cost of Letters of Administration as agreed by Counsel, though this would have seemed to me an inevitable expense.

The first defendant has asked me to apportion the damages in accordance with the liability. The death was occasioned by the collision, and the collision was undoubtedly due to negligent driving. Of this both were to some degree guilty. Neither ever used his brake, nor, when first seeing the other in circumstances which must have suggested that the other was inattentive, did either give audible warning of his approach. In this they were equally to blame. Neither was keeping a good look out, but in this having regard to their relative positions, first defendant's driver was the more to blame. None the less, when second defendant certainly saw the first defendant's car, the accident would yet have seemed to be avoidable, if first defendant's car were travelling at a pace approximate to his estimate. In fact the driver accelerated. Had he not done so, and certainly had he braked, the point of first impact suggests that second defendant would have completed the outside of his turn in front of first defendant's car. In any case at any reasonable pace it would have been easy for first defendant to turn

away, and in the state of the traffic and in roads of this size, such action was both safe and reasonable. In my opinion although the negligence of both may have contributed to a position where a collision would result, the first defendant is alone responsible for its occurring.

There will therefore be judgment for the plaintiffs for the amounts assessed with costs against first defendant, while the case against second defendant is dismissed and plaintiffs should pay his costs.

On further arguments — varied first defendant to pay second defendant's costs directly to him.

Judgment for plaintiffs against first defendant; claim against second defendant dismissed.

NAI KANG TEO v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.)
November 29, 1950]

[Singapore — Magistrate's Appeal No. 139 of 1950]

Societies Ordinance (Cap. 217), ss. 11 and 15 — Presumptive proof of membership — Relental.

In this case the appellant was charged together with one Chng Chin Ngain as follows:—

"That he, on or about the 17th day of April, 1950, at Singapore, did assist in the management of an unlawful society to wit, the San Ji which is neither registered nor exempted under the provisions of Chapter 217, and thereby committed an offence punishable under section 11, Chapter 217."

The evidence for the prosecution was that Chng Chin Ngain the co-accused of the appellant in the Court below, who met the appellant at No. 63 River Valley Road, had taken certain unwrapped articles relating to San Ji Society, which was an unlawful society, to the house of the appellant, 65 River Valley Road, and told him that the articles concerned "the shrine". The appellant who was about to leave No. 63 River Valley Road, asked his co-accused to give the articles to his wife. Later the police went to No. 65 River Valley Road, the house of the appellant. The appellant arrived later, went to his bedroom and took down a basket hanging on the wall. The basket contained the things received from Chng Chin Ngain. The things when examined proved to be such as would give rise to the presumption under section 15(2) of the Societies Ordinance. The appellant was the principal tenant of the house. The appellant denied that he knew anything about the contents of the basket and that he was a member of a secret society.

Held, (1) that the evidence proved that the things were there with the consent of the appellant; and (2) that in view of the wording of section 15(2) of the Societies Ordinance "it shall be presumed" and not "it may be presumed", to relent the presumption there must be more than bare denial that the appellant was not a member of a secret society.

MAGISTRATE'S APPEAL.

D. S. Marshall for the appellant.

L. Rayner (D.P.P.) for the Crown.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — The appellant was convicted on a charge of assisting in the management of an unlawful society. The appeal against conviction turns on the presumption contained in section 15 of the Societies Ordinance (Cap. 217). It is in the first place argued that the presumption does not arise because the offending articles were never in possession of the appellant within the meaning of the section and further that the presumption, if it had ever arisen, had been displaced by proof to the contrary.

It appears that a raid was to take place on a certain house used as a coolie house in River Valley Road. Before the raid one Chng Chin Ngain, who was a co-accused of the appellant in the Court below, took certain articles to the house of the appellant. Before he went into the house he met the appellant and told him that they were things concerning the shrine and that one Ho Loh would call for them. The appellant said that he was going out and asked Chng to give them to his (the appellant's) wife. Chng did so. He told the wife of the appellant what the appellant had said that the things had to do with the shrine. The wife put the things in a basket. There was evidence that when Chng met the appellant the things were not wrapped up in any way.

Later the Police went to the house of the appellant. The appellant arrived later, went to his bed and took down a basket hanging on the wall. The basket contained the things received from Chng. The things when examined proved to be such as would give rise to the presumption under section 15(2). The appellant was the principal tenant of the house.

The evidence clearly proved that the things were there with the consent of the appellant. From the evidence it would be hard to resist the inference that the appellant knew what they were. Though there is no evidence that the appellant was in the house at the same time as the things until he was fetched by the Police, it seems to me that in the circumstances they were clearly in his possession.

In these circumstances the section says that it shall be presumed, not "may be presumed".

As against this the evidence for the appellant only amounted to a bare denial that he was a member of a secret society. Though it was probably not necessary to draw an adverse inference from the fact that the appellant had done no work since the period of the Japanese occupation, it is impossible to say that the learned Judge was wrong in not holding that the presumption had been disproved.

As regards the sentence, this is severe. However, the evidence indicates that the society was one of a dangerous character and I cannot therefore say that it was excessive.

Appeal dismissed.